


Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement 5555 California Avenue Suite 200 Bakersfield, CA 93309 661-395-3830 FAX: 661-395-3872	
DATE: November 10, 2009	In Reply Refer to Case No: 40-23734/218

CIVIL WAGE AND PENALTY ASSESSMENT

Awarding Body City of Fremont - Engineering Dept.	Work Performed in County of Alameda
PROJECT NAME Family Water Play Facility, Project Number PWC 8464	Project No. 0
Prime Contractor Sierra Bay Contractors, Inc., a California corporation	
Subcontractor Comfort - Air HVAC Inc., a California corporation	

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Division of Labor Standards Enforcement (the "Division") has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code section 1741, the Division hereby issues this Civil Wage and Penalty Assessment.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

Violations of Labor Code Sections 1771, 1774 for failing to pay prevailing wages to workers performing work in the scope of the Sheet Metal (HVAC) Total HVAC Contract of \$270,000 or less, misclassifying workers performing work in the scope of the Sheet Metal (HVAC) Total HVAC Contract of \$270,000 or less as Laborers
 Failure to pay training.

Penalties assessed pursuant to Labor Code Section 1775 at \$40.00 per violation and Labor Code Section 1813

The attached Audit Summary further itemizes the calculation of wages due and penalties under Labor Code sections 1775 and 1813.

The Division has determined that the total amount of wages due is: \$14,083.37

The Division has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$4,280.00

The Division has determined that the amount of penalties assessed against Comfort - Air HVAC Inc., a California corporation under Labor Code section 1776 is: \$0.00

Please refer to page 4 for specific withholding obligations pertaining to these amounts.

STATE LABOR COMMISSIONER

By Wacker Turner

Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code Section 1742, an affected contractor or subcontractor may obtain review of this Civil Wage and Penalty Assessment by transmitting a written request to the office of the Labor Commissioner that appears below within 60 days after service of the assessment. To obtain a hearing, a written Request for Review must be transmitted to the following address:

Labor Commissioner, State of California
Civil Wage and Penalty Assessment Review Office
2031 Howe Ave., Suite 100
Sacramento, CA 95825

A Request for Review either shall clearly identify the Civil Wage and Penalty Assessment from which review is sought, including the date of the assessment, or it shall include a copy of the assessment as an attachment, and shall also set forth the basis upon which the assessment is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the Labor Commissioner's receipt of the written Request for Review.

Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

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Opportunity for Settlement Meeting

In accordance with Labor Code section 1742.1(b), the Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Civil Wage and Penalty Assessment, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is in addition to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written Request for Review has already been made. Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding this assessment must be transmitted to Rachel Farmer
at the following address: 5555 California Avenue Suite 200
Bakersfield, CA 93309

Liquidated Damages

In accordance with Labor Code section 1742.1, after 60 days following the service of this Civil Wage and Penalty Assessment, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If the assessment subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

The Amount of Liquidated Damages Available Under this Assessment is \$14,083.37

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Statutory Withholding Obligations

1. Awarding Body Withholding Obligations

In accordance with Labor Code section 1727(a), before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy this Civil Wage and Penalty Assessment. The amount required to satisfy this Civil Wage and Penalty Assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

The amount which must be withheld and retained by the awarding body pursuant to this Civil Wage and Penalty Assessment is:

Wages Due:	<u>\$14,083.37</u>
Penalties Due Under Labor Code sections 1775 and 1813:	<u>\$4,280.00</u>
Penalties Due Under Labor Code sections 1776:	<u>\$0.00</u>
Total Withholding Amount:	<u>\$18,363.37</u>

2. Prime Contractor Withholding Obligations:

In accordance with Labor Code section 1727(b), if the awarding body has not retained sufficient money under the contract to satisfy this Civil Wage and Penalty Assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. This amount shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

☒ If this box is checked, the Labor Commissioner hereby requests that the prime contractor withhold the following amount from money due the subcontractor and transfer the money to the awarding body to satisfy this assessment:

Wages Due:	<u>\$14,083.37</u>
Penalties Due Under Labor Code sections 1775 and 1813:	<u>\$4,280.00</u>
Penalties Due Under Labor Code sections 1776:	<u>\$0.00</u>
Total Withholding Amount:	<u>\$18,363.37</u>

Distribution:

Awarding Body
Surety(s) on Bond
Prime Contractor
Subcontractor